FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage	)	WC Docket No. 18-155
	)	
	)	

REPLY COMMENTS OF T-MOBILE USA, INC.

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SUMMARY

Sections 201 and 202 of the Act provide the Commission with ample authority to take swift action to prohibit unjust and unreasonable abuses of the ICC system. T-Mobile encourages the Commission to use the record compiled in this and other proceedings to narrowly define and eliminate practices described herein that demonstrably harm consumers. To address disputes relating to rates assessed by tandem providers, the Commission should simply reset the rates that all tandem providers can charge. However, the Commission must reject sweeping proposals promoted by IXCs and ILECs to unwind 20 years of competitive policy and mandate direct connections. These proposals are prohibited by the Act, would increase the exposure of consumers to unwanted robocalls and other fraud, and would delay the promise of next generation networks. In addition, any possible consumer benefit that could be derived from these proposals could be achieved by targeted bans on unjust and unreasonable practices without the significant side effects of the proposed direct connect mandate. The Commission instead should facilitate the transition to an IP network designed according to sound engineering principles. The Commission could do so by adopting T-Mobile's "Safe Harbor POI Solution," which calls for the establishment of no more than eight to ten POIs across the nation where all service providers could interconnect directly or indirectly with all other service providers. This approach would promote workable, lasting principles for network management that prioritize the public interest and permanently resolve many of the problems this proceeding seeks to address.

TABLE OF CONTENTS

Page

Before the
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	)	
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T-Mobile USA, Inc.[1] ("T-Mobile") hereby replies to comments filed by parties in the above-captioned proceeding in response to the request by the Federal Communications Commission ("FCC" or "Commission") for comments on ways to eliminate opportunities for arbitrage within the intercarrier compensation ("ICC") system for the benefit of consumers.

The record reflects nearly unanimous support for Commission efforts to eliminate certain well-established forms of arbitrage,[2] but disagreement about the best means for eliminating them.[3] Some of the proposals advanced in this proceeding, including the first prong of the Commission's proposal, reflect sincere attempts to address arbitrage and fraud.[4] Others, including the proposals to mandate direct connections and to permit incumbent local exchange carriers ("ILECs") and their affiliates to dictate points of interconnection ("POIs"), merely seek to lure the Commission into perpetuating a system of gamesmanship by picking ICC winners and

1 T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly-traded company.

2 *See, e.g.*, AT&T Comments at 8-9; CenturyLink Comments at 5; Inteliquent Comments at 13; NTCA Comments at 1; Verizon Comments at 1.

3 *See, e.g.*, FailSafe Comments at 2; NTCA Comments at 8; Teliax Comments at 4.

4 *See, e.g.*, Inteliquent Comments at 3-4; NCTA Comments at 2; Sprint Comments at 3.

losers, which completely misses the goal of this proceeding and is not the agency's charge under the Communications Act of 1934, as amended (the "Act").[5]

T-Mobile agrees with commenters who respectfully urge the Commission to narrowly target specific practices rather than adopt the overbroad, drastic changes proposed by some parties.[6] If adopted, these extreme proposals would exacerbate arbitrage, harm competition, delay the transition to Internet-Protocol based interconnection, networks, and services (the "IP Transition"), and cause numerous unintended consequences. The proposals to mandate direct connections or to permit ILECs and their affiliates to dictate POIs would also violate the letter and spirit of the Act.

The best way to minimize harmful arbitrage and intercarrier disputes would be to facilitate and expedite the IP Transition, including by adopting T-Mobile's Safe Harbor POI Solution. In the meantime, to the extent the Commission identifies specific practices that clearly harm consumers without providing any offsetting benefits, the agency should rule that the practice is unjust and unreasonable in violation of Sections 201(b) or 202(a) of the Act. Similarly, to the extent the Commission determines that the rates charged by any class of common carriers clearly harm consumers without providing any offsetting benefits, the agency should reexamine the applicable rate regulation rather than force a different carrier class to pay the applicable charges.

I. The Commission Should Seek to Eliminate Arbitrage by Facilitating the IP Transition and Narrowly Targeting Specific Harmful Practices in the Meantime

The record demonstrates that atypical compensation flows underpin most of the interconnection disputes and practices at issue in this proceeding, including practices that are

[5] *See, e.g.*, CenturyLink Comments at 9; O1 Comments at 2; Peerless and ANI Comments at 3; AT&T Comments at 12.

[6] *See, e.g.*, Inteliquent Comments at 2-3; Sprint Comments at 4-5; Verizon Comments at 6-7.

undertaken for no purpose other than to exploit the current intercarrier compensation rules in ways that were not contemplated when they were adopted, in order to maximize revenues.[7] Nearly all of these exploitative practices involve generating, or transiting, high volumes of traffic that flow only in one direction.

Once the IP Transition is fully completed, the incentives to engage in these types of exploitative practices will no longer exist, or carriers will have better tools to detect and prevent them. In the meantime, the Commission can and should adopt narrowly tailored measures to target specific practices that harm consumers without providing any countervailing benefits. However, it is critically important that the Commission reject the attempts by some parties to expand the definition of arbitrage beyond reason and mischaracterize certain practices as traffic pumping (*e.g.*, designation of a competitive carrier, rather than the ILEC, as the homing tandem provider) in an effort to gain unfair advantages for particular classes of carriers (*e.g.*, intermediate carriers seeking to terminate Wholesale Traffic) through mandated direct connections and POIs unilaterally dictated by ILECs and their affiliates.

A. The Commission Should Not Mandate Direct Connections for Any Parties.

The record in this proceeding reflects widespread opposition to the Commission's second option of requiring each access-stimulating LEC to accept direct connection from an IXC.[8] As many parties noted, mandating direct connections would actually encourage more access arbitrage -- by both the access-stimulating LECs and by IXCs and other intermediate providers seeking to deliver traffic to the access-stimulating LECs -- rather than eliminate it.[9] With respect

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7 *See, e.g.*, AT&T Comments at 8; Inteliquent Comments at 3-4.

8 NPRM at ¶¶ 10-12; *See, e.g.*, AT&T Comments at 12; INS Comments at 4; ITTA Comments at 3; NCTA Comments at 1; Sprint Comments at 4.

9 NPRM at ¶¶ 10-12; *See, e.g.*, AT&T Comments at 12; INS Comments at 4; ITTA Comments at 3; NCTA Comments at 1; Sprint Comments at 4.

to competitive carriers, the Commission also lacks the statutory authority to mandate direct connections for the reasons T-Mobile has explained in past filings and in more detail below.[10] Finally, there is no factual support in the record for expanding the definition of access-stimulating LEC, and the Commission should not change the definition given the unintended consequences that would result from doing so.[11]

B. The Commission Should Directly Address Harmful Practices Unrelated to Rate Regulations Using Sections 201(b) and 202(a) of the Act.

For harmful practices that do not arise directly from the exploitation of rate regulations (*e.g.*, mileage pumping; manipulation of the location of the point of interconnection; hiding traffic; intentionally blocking and rerouting calls; and daisy chaining), the Commission could also carefully and narrowly define the practices, and then rely upon Section 201(b) or 202(a) of the Act to directly ban them.[12] Carriers engaging in these practices are unreasonably manipulating traffic flows in ways that harm the public interest. Given the wide latitude the Commission has to deem practices unjust and unreasonable, a finding that certain harmful practices are unlawful would be justified and well within the bounds of the law.[13]

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10 *See, e.g.*, T-Mobile Comments at 15-19.

11 *See* 47 CFR § 61.3(bbb).

12 47 U.S.C. § 201(b) ("The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter."); 47 U.S.C. § 202(a) ("It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage. The Commission can also rely on Section 251(b)(5) of the Act, 47 U.S.C. § 251(b)(5), to prohibit practices that are inconsistent with the duty of all local exchange carriers ("LECs") to "establish reciprocal compensation arrangements for the transport and termination of telecommunications," although many of the types of harmful arbitrage at issue here do not necessarily violate Section 251(b)(5).

13 *See Bell Atlantic Tel. Co. v. FCC*, 79 F.3d 1195, 1202 (D.C. Cir. 1996) ("the generality of these terms . . . opens a rather large area for the free play of agency discretion, limited of course by the familiar 'arbitrary' and 'capricious' standard in the Administrative Procedure Act." *See also Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance et al.*, WT Docket No. 98-100, GN Docket No. 94-33, MSD-92-14, Memorandum Opinion and Order and

1. Manipulating POIs

One of the most prevalent forms of harmful arbitrage today is the manipulation of POIs by shifting traffic amongst various entities—including many non-carriers—for the sole purpose of maximizing the intercarrier compensation that can be collected. For example, some ILECs force traffic to go through a CEA for the purpose of extracting additional, unreasonable charges for delivering traffic to the terminating carriers.[14] Others create shell companies to serve as their intermediate provider, and then force carriers to send traffic to that intermediate provider, who charges a fee shared with the ILEC.[15] The Commission can prohibit both of these practices as unjust and unreasonable under Section 201(b) or 202(a) of the Act. The record in this proceeding demonstrates that neither practice provides any potential benefits that could offset their harm to the public interest.[16]

Some RBOCs/ILECs also manipulate traffic flows as part of their interconnection strategy. These parties force direct connections deep into their networks by insisting that competitive carriers, including T-Mobile, establish a POI at each and every one of their end offices for every one of their affiliated companies. When competitive carriers are forced to build deep within the PSTN to reach the RBOCs/ILECs, the RBOCs/LECs are then able to both: (a) sidestep the cost of maintaining their networks; and (b) generate higher revenues by charging the other carriers that have no choice but to rely upon the facilities of the RBOCs/ILECs to connect.

Notice of Proposed Rulemaking, 13 FCC Rcd 16857, ¶15 (1998) (stating that Sections 201 and 202 "set out broad standards of conduct," and therefore it is up to the "Commission [to] give the standards meaning by defining practices that run afoul of carriers' obligation, either by rulemaking or by case-by-case adjudication.").

14 Inteliquent Comments at 3-4.

15 *See* Inteliquent Comments at 3 (describing how in this scenario, the platform connected to the LEC end-office purposefully rejects calls Inteliquent hands off to the CEA so that the call is then re-routed to an IXC that has a direct route into the platform's affiliated intermediate provider).

16 *See, e.g.,* Inteliquent Comments at 5; South Dakota Network Comments at 3.

The consumer, though, is the real loser in these situations, as these industry practices inevitably increase costs for competitive carriers and ultimately stall the IP transition. Fortunately, the Commission does not need to adopt additional rules to address the harmful practices that some RBOCs/ILECs use to achieve this result, because the practices are fundamentally inconsistent with the plain language of the Act and the Commission's implementing regulations and policies, which provide competitive carriers with the sole right to choose where to locate the POI and whether to connect directly or indirectly.[17]

To eliminate inefficiencies arising from the practices of RBOCs/ILECs and enhance network performance for customers, T-Mobile chose Inteliquent as its homing tandem provider rather than the RBOCs/ILECs. Before designating Inteliquent as its homing tandem, T-Mobile had been forced to establish over 4,000 TDM direct connections to various RBOC/ILEC end offices. Since establishing its working relationship with Inteliquent, T-Mobile has been able to disconnect almost all of these TDM connections and move to IP, reducing the number of connections from 4,000 to only seven. In addition to being far more efficient, this new network topology is less subject to outages (even in the event that one or more of the connections is fully disabled due to a natural disaster or terrorist attack) because each of the seven connections:

- is served by redundant fiber optic cables that are physically diverse; and
- serves as a failover for the other connections.

These substantial benefits are in addition to the tools that Inteliquent and T-Mobile have successfully implemented together to materially reduce robocalls, spam and fraudulent traffic sent to T-Mobile's customers.[18] To date, these are not offerings that RBOCs/ILECs have

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17 *See, e.g.*, 47 U.S.C. § 251(c)(2)(B).

18 Any allegation that T-Mobile has not accurately stated the reasons for selecting Inteliquent as its homing tandem provider (or that T-Mobile selected Inteliquent to engage in some form of "arbitrage") is

traditionally made available. As a result, instead of needlessly lining the pockets of other carriers for yesterday's services, T-Mobile has been able to invest the savings from these improvements into deploying 5G to more Americans and bridging the digital divide.[19]

Not only has designating Inteliquent as a homing tandem provider been a sound decision on behalf of T-Mobile subscribers, it's a decision well within T-Mobile's rights to make. The Act and the Commission's existing rules expressly permit competitive carriers like T-Mobile to choose how to configure their networks—and to choose competitive providers of homing tandem services like Inteliquent— without regard to the self-interested preferences of other carriers. The Commission needs to prevent RBOCs/ILECs and other parties from undermining these rights.

2. Hiding Traffic or Disguising the Nature of the Traffic

Another very common form of arbitrage that deserves the Commission's attention is the practice of hiding traffic or disguising the nature of traffic. Today, consumers rarely choose an IXC that is not affiliated with their mobile or local service provider, because usage rates have fallen to near zero, and consumers are happy to use the all-you-can-eat plans offered by wireless carriers, cable providers, and even the LECs. Therefore, IXCs have been forced to find other ways to generate revenue.

IXCs now target enterprise customers who typically purchase their long-distance service in combination with other services (*e.g.*, wireless or PBX). Most IXCs involved in the enterprise market are affiliated with large incumbents. To further supplement legacy long-distance revenues, IXCs also market wholesale service offerings to other carriers. The wholesale market boomed

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fundamentally inconsistent with the facts. *See e.g.* Comments of Peerless and ANI at 12 (mischaracterizing Inteliquent's statements about the services it provides T-Mobile as a "smokescreen").

[19] Press Release, T-Mobile, T-Mobile Building Out 5G in 30 Cities This Year, and That's Just the Start (February 26, 2018), https://www.t-mobile.com/news/mwc-2018-5g.

following adoption of the 1996 Act[20] while everyone sought a cheaper route to the RBOCs. As usage rates have fallen and traffic has shifted away from the LECs, most carriers have found it easier and more efficient to exchange traffic directly with other carriers. This is why most of T-Mobile's traffic is now exchanged directly with other carriers that serve actual end users.[21] As a result, only smaller (*e.g.*, rural) carriers must rely on IXCs, because it is inefficient for them to establish tens of direct connections with all the carriers, much less the thousands of connections that would be required if done via the PSTN.

With respect to wholesale carriers, market changes have put pressure on revenues, which have led some to engage in unjust and unreasonable practices like masking the nature of the traffic (*e.g.*, making interMTA traffic appear to be local traffic to avoid the obligation to pay terminating access charges) and serving parties who generate large volumes of traffic, including robocalls and one-way services. Because they rely on robocalling and mass calling for revenue, IXCs and other types of intermediate carriers that carry Wholesale Traffic have every incentive to perpetrate, or at the very least enable, harmful arbitrage. The Commission can and should prohibit practices that depend upon hiding the true nature of the traffic, or enabling robocalling and other types of fraudulent traffic, as unjust and unreasonable practices under Section 201(b) or 202(a).

3. Mileage Pumping and Daisy Chaining

The Commission should act quickly to stop blatant abuses of the ICC system like mileage pumping and daisy chaining.[22] Mileage pumping involves designating distant points of interconnection to inflate per-mile transport charges. Daisy chaining refers to the assessment of

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20 *See generally* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the 1996 Act).

21 T-Mobile Comments at 5..

22 *See* AT&T Comments at 9; Inteliquent Comments at 2; Verizon Comments at 2.

switched access charges for superfluous network facilities that are not subject to bill-and-keep. Again, the record contains sufficient documentation of these practices, the latter of which constitutes outright fraud.[23] The Commission can and should immediately clarify that mileage pumping and daisy chaining are unjust and unreasonable practices that violate Sections 201(b) or 202(a) of the Act and express the agency's intent to take action against those engaged in such abuses.[24]

C. The Commission Should Directly Address Harmful Practices that Are Related to Rate Regulations By Changing the Relevant Rates.

For practices that exploit rate regulations by artificially stimulating conditions that were not contemplated when the Commission adopted the rate regulations (*e.g.* traffic pumping), the Commission should adjust the applicable rate regulations to properly account for the current practice at issue (*e.g.* change the rate). For example, where a party that generates high volumes of traffic intentionally locates in a rural area where rates have been set based on an assumption of low traffic volumes, the Commission can directly address the resulting harms by adjusting the rate to reflect the actual traffic volumes. Alternatively, the Commission can complete the transition to bill-and-keep, which would also resolve the issue.[25] The best solution, of course, would be to facilitate and expedite the IP Transition.

A recurring request among certain commenters has been for the Commission to shift the obligation to pay terminating access charges from the originating carrier or IXC to the terminating carrier. Notably, and not surprisingly, it is the IXCs and those who originate or

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23 *See id.*

24 *See Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711, 13715 at ¶ 10-11(2015) (clarifying that the Commission can enforce Section 201(b) without first adopting a rule prohibiting the conduct at issue).

25 As T-Mobile has previously noted, bill-and-keep alone is not a panacea, because parties can also exploit the ability to terminate for no cost, T-Mobile Comments at 21. For this reason, completion of the IP Transition is of critical importance.

transit high volumes of calls making this request.[26] Putting aside the self-interest underlying these commenters' arguments, the Commission should resist any inclination to duck the underlying problem by merely forcing a different carrier to pay access charges based on an inappropriate rate, thereby departing from a well-tested calling-party-pays system.

For example, some parties claim that Inteliquent's tandem rates are unreasonable despite the fact that they are capped at the same amount that RBOCs/ILECs charge.[27] To the extent the tandem rate regulations are inappropriate, the correct course of action is to adjust the rates that apply to *all* tandem providers, not to interfere with the right of carriers to select competitive homing tandem providers in place of the RBOCs/ILECs. Interference with carriers' right to choose a competitive homing tandem provider should not be countenanced whether through a direct prohibition or indirectly, by forcing those carriers to pay the tandem transit charges if they do designate a competitive carrier like Inteliquent as the homing tandem provider. Without such a right, carriers lose the ability to optimize their networks and a once competitive market for tandem transit disappears. Therefore, the Commission should reject any attempt to deprive competitive carriers of their rights under the Act to configure their networks as they deem appropriate, choose to interconnect directly or indirectly, and rely upon competitive carriers like Inteliquent for homing tandem services as a competitive alternative to the RBOCs/ILECs.

II. The Commission Should Reject Overly Broad Proposals Made to Gain an Unfair Advantage in the Market

CenturyLink, Peerless, O1, and others continue to urge the Commission to impose a mandatory duty on competitive carriers like T-Mobile to establish direct connections upon

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[26] Peerless and ANI Comments at 3; O1 Comments at 11; CenturyLink Comments at 10; AT&T Comments at 21.

[27] O1 Comments at 7; Peerless and ANI Comments at 12.

request, claiming that doing so would end "arbitrage" and make interconnection more efficient.[28] In declining direct connection requests, however, competitive carriers like T-Mobile have already conducted a thoughtful analysis on behalf of its individual end users, as explained above and in past filings. Indeed, T-Mobile's decision to designate Inteliquent as its homing tandem provider and require wholesale traffic to be routed through that tandem have resulted in better services for its subscribers through, among other things: (a) a very substantial reduction in unwanted robocalls and other fraud, making T-Mobile the industry leader in screening such calls;[29] and (b) greater network efficiency at lower costs through the reduction in network connections from 4,000 to seven.

Ironically, none of the parties who seek to impose mandatory direct connections on T-Mobile are themselves directly connected. As previously explained, T-Mobile will directly connect with any carrier to exchange Retail Traffic where traffic volumes justify a direct connection.[30] T-Mobile elects indirect connections solely for carriers that want to exchange Wholesale Traffic, which means that a carrier serves as the indirect carrier between T-Mobile and the carrier that serves the end user. The Commission should reject disingenuous, exaggerated claims about supposed negative outcomes caused by indirect connections and refuse to permit a carrier on the originating side of a call to deny T-Mobile the option to route traffic through a third party, particularly when the originating carrier is also routing traffic through a third party.

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28 CenturyLink Comments at 9; O1 Comments at 2; Peerless and ANI Comments at 3; AT&T Comments at 12.

29 T-Mobile Comments at 7.

30 T-Mobile Comments at 3; Letter from Todd D. Daubert, Counsel to T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90. 07-135, CC Docket No. 01-92 (filed Jan. 15, 2018).

Contrary to claims made by self-interested commenters,[31] mandating direct connections would cause myriad detrimental effects for consumers and the future of the public telephone network. Without the ability to take advantage of tools provided by intermediate providers like Inteliquent, T-Mobile and others would be unable to vet the traffic being passed to its customers. This would lead to a proliferation of robocalling, unwanted telemarketing calls, fraudulent and ghost traffic in complete contravention to the Commission's oft-stated priority of protecting consumers from this scourge.[32] What's more, without the ability to manage, optimize, and convert traffic to IP through an intermediate service provider's offerings, our customers would experience degraded service quality and all users would be forced to tolerate a snaillike transition to an all-IP network.

The proposals to mandate direct connections advanced by commenters are also fundamentally inconsistent with the letter and the intent of the Act. As T-Mobile explained in initial comments, the Commission does not have authority to impose such a requirement and as explained above, even if the Commission could adopt commenters' proposal, it would be unwise to do so.[33]

Still, a few parties persist in urging the Commission to ignore the plain language of the Act and the will of Congress to impose certain affirmative duties suitable for incumbent LECs, *not* competitive carriers, that were intended to level the playing field and aid new competitors in

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31 CenturyLink Comments at 9; Peerless and ANI Comments at 3-9.

32 On March 23, 2018, the FCC and the Federal Trade Commission hosted a joint policy forum entitled "Fighting the Scourge of Illegal Robocalls." Since then, FCC Chairman Pai has announced several initiatives to fight illegal robocalls with across the board support from other commissioners. In his remarks at the forum, Chairman Pai stated: "None of us will defeat this scourge alone. . . . Here at the FCC, combatting illegal robocalls is our consumer protection priority . . ." Remarks of FCC Chairman Ajit Pai at FTC-FCC Joint Policy Forum: "Fighting The Scourge of Illegal Robocalls", https://www.fcc.gov/document/chairman-pai-remarks-joint-fcc-ftc-illegal-robocall-policy-forum (Mar. 23, 2018).

33 T-Mobile Comments at 15-20.

entering the market.[34] Congress created these obligations in recognition of the overwhelming barriers to entry CLECs faced given incumbent LECs' control of the PSTN's physical infrastructure. Therefore lawmakers imposed a duty on incumbent LECs to provide interconnections with the new networks constructed by the CLECs.[35] According to the Act, an incumbent LEC must permit a CLEC to select any POI within the incumbent's network that is "technically feasible."[36] If an incumbent LEC denies a CLEC's request for interconnection at a particular point, it "must prove to the state commission that interconnection at that point is not technically feasible." [37]

Although CLECs have no similar obligations, some parties seek to rewrite the Act by alleging that "the carrier that bears the financial responsibility to deliver traffic to (or from) the edge has the unfettered right to choose how and by what arrangements it will deliver that traffic to (or from) the designated network edge."[38] The fact is that with regard to competitive carriers' networks, no such "unfettered right" is prescribed by the Act and the Commission cannot create

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34 *See* Preamble to the Telecommunications Act of 1996 ("AN ACT To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.").

35 Section 251(c)(2) imposes upon LECs "[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. § 251(c)(2).

36 47 U.S.C. § 251(c)(2)(B). Likewise, Part 20 of the Commission's rules provides that mobile carriers like T-Mobile may dictate how they interconnect with LECs ("A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request, unless such interconnection is not technically feasible or economically reasonable.") 47 CFR § 20.11. Peerless has argued that the Commission may rely on Section 201 to conclude T-Mobile's arrangement with Inteliquent is unjust and unreasonable and impose a direct connection requirement. However, as the Commission recently explained in a *Memorandum Opinion and Order* that disposed of an investigation of Aureon's interstate switched transport rate, application of the Commission's rules cannot yield an unjust and unreasonable outcome under the Act. *See In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, Memorandum Opinion and Order, FCC 18-105, ¶ 121 (Jul. 31, 2018); *see* also Letter from John Barnicle, President and CEO, Peerless, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92 at 5 (dated March 15, 2018).

37 47 C.F.R. § 51.305(e).

38 AT&T Comments at 7; O1 Comments at 3.

such a right. What IXCs and incumbent carriers seek in this proceeding is belied by the last 22 years of policymaking focused on fostering competition and protecting consumers.

The FCC has stated that its mission is to strip away outdated and unnecessary burdens on industry and promote innovation while ensuring its statutory objectives are met.[39] The Commission can achieve its mission and remain faithful to the Act by adopting T-Mobile's Safe Harbor POI Solution.[40] Unlike proposals to require direct connections, the Safe Harbor POI Solution is consistent with the law and also facilitates the IP transition, a goal for which Chairman Pai has repeatedly stressed his support.[41] If the Commission nonetheless adopts a proposal that focuses on the symptoms of arbitrage rather than on the underlying cause, the agency should adopt the following safeguards to mitigate further harm to the network and consumers as described below:

- ILECs must not be allowed to exploit any new measures to cement their control over the network. Specifically, ILECs must not be able to unilaterally control the location of POIs or other means for interconnecting. The agency must also prohibit ILECs from using their affiliates to require separate connections for each company and all of their end offices. Absent this limitation, competitive carriers would have to build deep into their networks, which would set the IP Transition back years and telecom policy generally back decades.
- All new connections must be made in IP, not TDM. The agency should not allow ILECs to imperil the IP Transition without taking precautions to ensure at least some forward progress. It is imperative to the public interest that the agency embrace the IP future at this juncture.
- The Commission should require carriers to take full responsibility for the traffic they are passing to other carriers by adopting the following measures:

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39 *Petition of USTelecom for Forbearance Pursuant to U.S.C.160(c) for Enf't of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157, ¶ 2 (2015).

40 *See generally*, e.g., Comments of T-Mobile USA, Inc., WC Docket Nos. 10-90 & 07-135; CC Docket No. 01-92 (filed Oct. 26, 2017); T-Mobile Comments at 20.

41 "[I]ndeed,…I've been calling on the FCC to expedite the IP transition, to end the burdensome regulations that tie up carrier resources and slow the deployment of next-generation networks…."[i]n a world where consumers are embracing the IP Transition in growing numbers each and every day, this agency shouldn't be timid - and yet we are." *In the Matter of Tech. Transitions*, 31 FCC Rcd. 8283 (2016) (Statement of Commissioner Pai).

- Requests for direct connections must be accompanied by an agreement that allows the other party to send back traffic to the originator for which the requesting party is an intermediate provider. Additionally, this must include all of the originator's affiliates to have any meaningful effect; and
- Requests for direct connections must be accompanied by an agreement to utilize reasonable network management (*i.e.*, SHAKEN/STIR). By mandating direct connections, the Commission would strip carriers of their ability to choose an intermediate provider to mitigate the risk associated with exchanging Wholesale Traffic. Therefore if a party cannot offer a mechanism to identify the origin of its traffic, the other party should not be obligated to receive it.

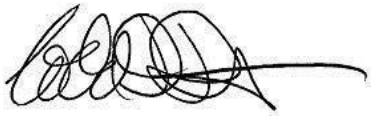
- The Commission should not allow non-carriers into the call stream. Any company that carries traffic should have to obtain a Section 214 license from the Commission and concede to the appropriate oversight.
- Direct connections should follow the same rules as the Internet, where direct connections are settlement-free when traffic is roughly balanced or the party sending more traffic pays the receiving party. Market developments in the post-*Transformation Order* era show that bill-and-keep is a good policy, but when there is parity. Otherwise, the sending party has economic incentives to dump tons of traffic from unknown sources on to the receiving party's network.

In the end, however, the harm from unintended consequences far outweigh the potential benefits of mandating direct connections even with these protections. For this reason, T-Mobile respectfully urges the Commission to reject any attempt to mandate direct connections, whether directly or indirectly by shifting costs.

III. Conclusion

For the reasons set forth above, the Commission should facilitate the IP Transition and seek to eliminate arbitrage and fraud within the ICC system that harms consumers by directly addressing the underlying causes of the arbitrage and fraud. In addressing arbitrage and fraud, the Commission should recognize the motive and opportunity for intermediate access providers on the originating side to exploit the rules and reject ILECs' self-serving calls for a broad direct connection requirement. Moreover, as the Commission considers the instant *NPRM* and ICC reform generally, it should strive to avoid duplicating past network failures and accelerate the stalled IP transition to deliver a network that is responsive to the needs of consumers first and foremost.

Respectfully submitted,



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